

Monitoring after Delisting and The Migratory Bird Treaty Act (MBTA)

MONITORING

The removal of the peregrine falcon from the list of endangered and threatened species removes all protections currently provided to the species under the Endangered Species Act (ESA). However, section 4(g)(1) of the ESA requires that the Secretary “implement a system in cooperation with the States to monitor effectively for not less than five years the status of all species which have recovered” and no longer require the protection of the Act. This provision allows the development of a program(s) to detect the inability of the species to sustain itself without the protective measures afforded by the Act. If during this monitoring period the species is not maintaining its recovered status, the species could be relisted under the ESA.

The peregrine falcon monitoring program was developed in cooperation with State resource agencies, recovery team members, and interested scientists and will be carried out in collaboration with Federal, State, and private cooperators.

The scope of the monitoring program will include 5 geographical regions representing the types of landscapes inhabited by the peregrine falcon throughout its range; surveys will be conducted in index areas within each designated region. The peregrine falcon monitoring program will begin in the spring of 2001 and end in 2013. During the 13-year period, surveys will be conducted every 3 years for a total of 5 surveys. The designation of a 13 year monitoring period encompasses approximately 2 generations of peregrines in the wild which should be sufficient in length to detect an inability of the population to be self-sustaining. Monitoring will include the collection of information on territory occupancy, nesting success, and contaminant exposure. At the end of each tri-annual monitoring period and at the conclusion of the 13 year monitoring program, we will review all available information to determine if relisting, continuation of monitoring, or termination of monitoring is appropriate.

MIGRATORY BIRD TREATY ACT (MBTA)

The finalization of the proposed delisting of the peregrine falcon will not affect the protection provided to the species by the Migratory Bird Treaty Act of 1918 (MBTA). The MBTA is the domestic law that

affirms, or implements, the United States' commitment to four international conventions with Canada, Japan, Mexico and Russia for the protection of shared migratory bird resources.

The MBTA prohibits the take, possession, import, export, transport, selling, purchase, barter, or offering for sale, purchase or barter, any migratory bird, their eggs, parts, and nests, except as authorized under a valid permit (50 CFR 21.11). Certain exceptions apply to employees of the Department of the Interior to enforce the MBTA and to employees of Federal agencies, State game departments, municipal game farms or parks, and public museums, public zoological parks, accredited institutional members of the American Zoo and Aquarium Association and public scientific or educational institutions.

The MBTA regulations allow for the taking and use of raptors for falconry, scientific and propagation purposes pursuant to State and Federal permits (50 CFR 21.28 through 21.30). Certain criteria must be met prior to issuance of these permits, including a requirement that the issuance will not threaten a wildlife population (50 CFR 13.21(b)(4)). Now that the peregrine falcon has been removed from the list of endangered and threatened species, take for some purposes could be permitted. However, the Service will not allow take of falcons under the MBTA until management plans undergo public review, are approved, and published in the Federal Register. The criteria will be structured to ensure that the take does not negatively impact wild populations, particularly those in need of continued protection to allow further recovery. The criteria will apply to all current and future falconry and raptor propagation permit holders having permits that might allow take of peregrines.

The MBTA and its implementing regulations provide ample authority to conserve the peregrine falcon and protect against harmful take in the absence of ESA protections.

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